REMARKS

Introductory Comments:

Claims 22, 23 and 26-29 were addressed in the Advisory Action dated October 15, 2003. Applicant notes with appreciation the withdrawal of the previous rejections over the art. However, the Examiner maintained the rejection of the claims under 35 U.S.C. §112, first paragraph, as well as the provisional rejection under the judicially created doctrine of obviousness-type double patenting. These rejections are respectfully traversed as discussed more fully below.

Overview of the Above Amendments:

Claim 23 has been cancelled. Claim 22 has been amended to delete the recitation "pharmaceutically acceptable carrier." Cancellation of claim 23 and amendment of claim 22 is made without prejudice, without intent to abandon any originally claimed subject matter, and without intent to acquiesce in any rejection of record. Applicant expressly reserves the right to file one or more continuing applications hereof containing the canceled or unamended claims.

New claims 30-34 have been added. These claims are framed with reference to the fragment recited in the composition claims, which claims were stated in the Office Action to be free of the art. Applicants note that protein claims were originally present in the application but were cancelled in favor of the composition claims.

Rejection under 35 U.S.C. §112, First Paragraph:

The Office maintained the rejection of the claims under 35 U.S.C. §112, first paragraph, based on the use of the recitation "a pharmaceutically acceptable carrier." The Office asserts that "a composition claimed for pharmaceutical use must be enabled for its intended use" and that deleting the term "pharmaceutically" from the claims would raise new issues under 35 U.S.C. §112, first and second paragraphs based on the recitation "acceptable."

Applicants continue to assert for reasons of record that the use of the term "pharmaceutically acceptable excipient" does not render the claims objectionable under 35 U.S.C. §112, first paragraph. As previously explained, the specification clearly details multiple uses for the proteins and compositions of the invention. For example, page 7, line 19 through page 8, line 21 explains that the proteins are useful in diagnostic assays for HCV infection, e.g., in ELISAs or RIAs and in other competitive assays. Moreover, these claims are composition claims, not method claims. It is improper for the office to be reading a method limitation into a composition claim.

Nevertheless, solely in order to advance prosecution, applicants have eliminated the phrase "pharmaceutically acceptable carrier" from the claims. Thus, this basis for rejection no longer applies and withdrawal thereof is respectfully requested.

The Obviousness-type Double Patenting Rejection:

The Advisory Action also maintained the provisional rejection of claims 22, 23 and 26-29 under the judicially created doctrine of obviousness-type double patenting over claim 17 of USSN 09/011,910 and claims 7 and 27-31 of copending USSN 09/509,612. Applicant will consider the propriety of filing a Terminal Disclaimer once allowable subject matter is indicated.

CONCLUSION

Applicant respectfully submits that the claims define a patentable invention. Accordingly, a Notice of Allowance is believed in order and is respectfully requested.

Please direct all further written communications in this application to:

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Respectfully submitted,

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